

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

IN THE MATTER OF:)

M&S GRADING, INC.,)

Debtor.)

CONTRACTORS, LABORERS,)
TEAMSTERS AND ENGINEERS HEALTH)
& WELFARE PLAN, CONTRACTORS,)
LABORERS, TEAMSTERS AND)
ENGINEERS PENSION PLAN, DEAN)
HIGHTREE, KIM QUICK, TOM)
MERKSICK, CALVIN G. NEGUS,)
VIC J. LECHTENBERG and EUGENE)
LEA, TRUSTEES,)

Appellants,)

v.)

M&S GRADING, INC.,)

Appellee.)

DEAN HIGHTREE, KIM QUICK, TOM)
MERKSICK, CALVIN G. NEGUS,)
VIC J. LECHTENBERG AND EUGENE)
LEA, TRUSTEES, THE)
CONTRACTORS, LABORERS,)
TEAMSTERS AND ENGINEERS HEALTH)
AND WELFARE PLAN, THE)
CONTRACTORS, LABORERS,)
TEAMSTERS & ENGINEERS PENSION)
PLAN,)

Appellants,)

v.)

FIRST NATIONAL BANK OF OMAHA)
and JAMES KILLIPS, TRUSTEE FOR)
DEBTOR M&S GRADING, INC.,)

Appellees.)

8:07CV196
8:07CV243
8:07CV244
8:07CV245

8:07CV208

ORDER

This matter is before the Court on appellants' motion to consolidate the above referenced bankruptcy appeals. Inasmuch as the Court has dismissed two of the five appeals requested to be consolidated, the motion to consolidate appeals will be denied with respect to those two appeals. Whether to consolidate the remaining appeals is a question committed to this Court's discretion. *In re Be-Mac Transport Co.*, 83 F.3d 1020 (8th Cir. 1996)(citing *Enterprise Bank v. Saettele*, 21 F.3d 233, 235 (8th Cir. 1994)(district court has broad discretion in consolidating actions involving a common question of law or fact)). Since the "same facts and parties underlay each of the bankruptcy court's orders" in this case, the Court finds that the remaining three appeals contain common questions of fact and should be consolidated. 83 F.3d at 1027. Accordingly,

IT IS ORDERED:

1) The motion to consolidate is denied as to Case Nos. 8:07CV244 (Filing No. 10) and 8:07CV245 (Filing No. 9); and

2) The motion to consolidate is granted as to Case Nos. 8:07CV196 (Filing No. 13), 8:07CV208 (Filing No. 16) and 8:07CV243 (Filing No. 10), and 8:07CV196 is designated as the "Lead Case." Case Nos. 8:07CV208 and 07CV243 are designated as the "Member Cases."

3) If properly docketed, documents filed in the lead case will be automatically filed in all member cases. The parties are instructed to file all further documents (except those described in Paragraph 4 below) in the lead case and to

select the option "yes" in response to the system's question whether to spread the text.

4) The parties may not use the spread text feature to file complaints, amended complaints, and answers; to pay filing fees electronically using pay.gov, or to file items related to service of process.

5) If a party believes that an item in addition to those described in Paragraph 4 should not be filed in all of the consolidated cases, the party must move for permission to file the item in one or more member cases. The motion must be filed in all the consolidated cases using the spread text feature.

DATED this 4th day of September, 2007.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court